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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

SUSAN FEDERIGHI et al., Plaintiffs and Respondents, v. KEVIN R. MCLEAN, Defendant and Appellant.	A112377/A115513 (Marin County Super. Ct. No. 166236)

In these consolidated appeals, defendant and appellant Kevin R. McLean (McLean) appeals the trial court's orders denying his motions to vacate a 1999 default judgment against him. McLean contends the judgment is void because plaintiffs failed to file a statement of damages conforming to Section 425.11 of the Code of Civil Procedure[1] prior to entry of default, and because notice of default does not meet the due process requirements of section 580. Having concluded McLean's contentions lack merit, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 29, 1995, plaintiffs and respondents Susan Federighi, Jeffrey Ford, Bill Ford and Tara Ford (plaintiffs) filed their complaint for damages, naming as defendants McLean, the Law Offices of Melvin M. Belli (Belli law firm) and other individuals at the Belli law firm. The complaint alleges as follows: Plaintiffs were

[1] Further statutory references are to the Code of Civil Procedure unless otherwise noted.

employed by defendants between 1993-1995; plaintiffs performed their duties in an exemplary fashion, plaintiffs were entitled to agreed upon wages and reimbursement for expenses, and were promised substantial bonus payments as part of their wages; defendants refused to pay wages due and owing to plaintiffs; and, defendants terminated plaintiffs in retaliation for demanding payment of wages due and owing.

On the basis of these factual allegations, plaintiffs brought four causes of action. In their first cause of action for breach of employment agreement/statutory obligation, plaintiffs alleged that defendants' failure and refusal to pay wages and bonuses violated the California Labor Code. Plaintiffs further alleged that they "are entitled to an award of all wages and bonus payments due and owing, as well as penalties, interest pursuant to the Labor Code, costs and attorney fees, all in an amount in excess of $400,000, the exact amount to be ascertained at trial."

In their second cause of action for discrimination and harassment, plaintiffs alleged that during the scope of their employment with defendants they were discriminated against, harassed and terminated by defendants in violation of the California Fair Employment and Housing Act. Plaintiffs alleged that as a direct result of defendants' conduct in this regard, "plaintiffs have suffered . . . severe emotional distress to their general damage in a sum in excess of $100,000, the exact amount to be ascertained at trial." With respect to the second cause of action, plaintiffs also claimed punitive damages in excess of $500,000.

Regarding their third cause of action for wrongful termination, plaintiffs alleged defendants "breached their employment agreement with plaintiffs, including the implied covenant of good faith and fair dealing." In regard to their fourth cause of action for infliction of severe emotional distress, plaintiffs alleged defendants intentionally or negligently caused plaintiffs to suffer severe emotional distress "to their damage in an amount in excess of $200,000, in an exact amount to be ascertained at trial." In the prayer for relief, the complaint seeks actual and consequential damages (including loss of income and benefits) according to proof; general and punitive damages according to

proof; statutory penalties and interest according to proof; and costs of suit and reasonable attorneys fees.

McLean did not file an answer to the complaint, and plaintiffs filed a request for entry of default on July 18, 1996. On June 23, 1999, plaintiffs applied to the trial court for entry of default judgment against McLean. The application states that McLean was personally served with the complaint on May 7, 1996 and that McLean failed to appear after default was taken. Plaintiffs submitted declarations in support of their application for default judgment. In her declaration, Susan Federighi sought unpaid wages in the amount of $118,000, a penalty on unpaid wages of $3,600[2], interest to June 1, 1999 of $53,113.47, and attorney fees of $58,237.82.[3] Jeffrey Ford sought unpaid wages in the amount of $66,392.44, a penalty on unpaid wages of $3,000, interest to June 1, 1999 of $30,052.34, and attorney fees of $33,148.36. Bill Ford sought unpaid wages in the amount of $16,000, a penalty on unpaid wages of $3,200, interest to June 1, 1999 of $7,581.70, and attorneys fees of $8,927.23. On June 23, 1999, the trial court entered default judgment ordering that plaintiffs Susan Federighi, Jeffrey Ford and Bill Ford "shall have and recover judgment from" McLean in the above amounts.

On July 8, 2005, McLean filed a motion to vacate the default judgment. In his motion, McLean asserted he was never served with the summons and complaint in this matter. Further, McLean asserted that the default judgment is void because plaintiffs failed to serve him with a statement of damages before taking default, as required under section 425.11.

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[2] Each plaintiff requested a penalty pursuant to Labor Code section 203, which states: "If an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days."

[3] Each plaintiff requested attorney fees pursuant to Labor Code section 218.5, which provides in pertinent part: In any action brought for the nonpayment of wages, . . . the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." Plaintiffs requested attorney's fees under their first cause of action in the complaint.

On September 9, 2005, the trial court issued its Order denying McLean's motion to vacate judgment. The court found by a preponderance of the evidence that McLean was properly served with summons and complaint. As more pertinent here, the court ruled as follows: "No statement of damages was required to enter a default judgment on the first cause of action alleging breach of employment agreement and labor code violations. (See CCP § 425.10(B).) The complaint was not limited to personal injuries, and the court did not award personal injury damages as part of this cause of action. The complaint alleged that plaintiffs sought damages for violation of the first cause of action 'in excess of $400,000, the exact amount to be ascertained at trial,' which allegation adequately apprised defendant of the amount of damages demanded."

On September 28, 2005, McLean filed a motion for reconsideration of the order denying his request to vacate the default judgment. On October 27, 2005, the trial court granted McLean's motion for reconsideration. The court found that McLean presented new facts calling into question whether he was personally served with summons and complaint, and indicated it would schedule an evidentiary hearing on the issue. On November 17, 2005, prior to the scheduled evidentiary hearing, McLean filed a notice of appeal from the September 9, 2005 order denying his motion to vacate default judgment (No. A112377).

Subsequently, the evidentiary hearing took place over several days in November 2005. The court then ordered briefing and took the matter under submission on March 6, 2006. On August 1, 2006, the trial court issued a Statement of Decision (SOD). In its SOD, the court found that McLean had been properly served with summons and complaint. The court also reiterated its earlier ruling that no statement of damages [under section 425.11] is required for a default judgment based on plaintiffs' first cause of action alleging breach of employment agreement and labor code violations. The court reaffirmed its order denying McLean's motion to vacate the default judgment. On

September 28, 2006, McLean filed a Notice of Appeal from the trial court's SOD denying reconsideration of the motion to vacate judgment (No. A115513).[4]

DISCUSSION

A. Applicable Legal Framework

Section 580 provides in pertinent part: "The relief granted to the plaintiff, if there is no answer, *cannot exceed* that demanded in the complaint [or] in the statement required by Section 425.11." (§ 580, subd. (a), italics added.) Section 585 sets forth the procedures for obtaining a default judgment and it states in pertinent part: "In an action arising upon contract or judgment for the recovery of money or damages only, if the defendant has . . . been served, other than by publication, and no answer . . . [or other responsive pleading] has been filed with the clerk of the court within the time specified in the summons, or within further time as may be allowed, the clerk, upon written application of the plaintiff, and proof of the service of summons, shall enter the default of the defendant . . . so served, and immediately thereafter enter judgment for the principal amount demanded in the complaint [or] in the statement required by Section 425.11." (§ 585, subd. (a).)

Section 425.10 states in pertinent part: "A complaint or cross-complaint shall contain both of the following: (1) A statement of the facts constituting the cause of action, in ordinary and concise language. (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated. (b) Notwithstanding subdivision (a), where an action is brought to recover actual or punitive damages *for personal injury or wrongful death*, the amount demanded shall not be stated." (§ 425.10 (a)-(b), italics added.)

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[4] This court issued an order on January 9, 2007, consolidating Appeal Nos. A112377 and A115513. On June 18, 2007, the consolidated appeals were stayed pending bankruptcy proceedings. On February 18, 2009, plaintiffs filed a notice of dismissal of bankruptcy requesting that this court remove the stay. The stay was lifted by order of this court dated February 20, 2009.

Section 425.11 states in pertinent part: "When a complaint is filed in an action to recover damages for *personal injury or wrongful death*, the defendant may at any time request a statement setting forth the nature and amount of damages being sought. . . . [¶] If no request is made for the statement. . . , the plaintiff shall serve the statement on the defendant before a default may be taken." (§ 425.11 (b)-(c), italics added.)

In particular, "[s]ection 425.11 operates in conjunction with section 425.10, which mandates that a complaint for damages resulting from personal injuries or wrongful death shall not state the amount of damages sought." (*Jones v. Interstate Recovery Service* (1984) 160 Cal.App.3d 925, 928 (*Jones*).) The purpose of section 425.10's mandate "is to protect the defendants from adverse publicity resulting from inflated demands, particularly in medical malpractice cases (citation) . . . [¶] . . . [¶] . . . [whereas] [s]ection 425.11 was designed to give a defendant 'one "last clear chance" to respond to the allegations of the complaint and to avoid the precise consequences . . . [of] a judgment for a substantial sum . . . [without] any actual notice of . . . potential liability.' (Citation.)" (*Id.* at pp. 928-929.)

Together, these statutes ensure that "before a default may be entered, the defendant must be served, in the same manner as a summons, with notice of the amount of money damages or other relief sought. (§§ 425.10, 425.11, 585.) . . . The statutes preserve the defendant's right to contest an action and protect the defendant from unlimited liability[,] . . . [and] 'aim to ensure that a defendant who declines to contest an action does not thereby subject himself to open-ended liability.' (Citation.)" (*Schwab v. Southern California Gas Co.* (2004) 114 Cal.App.4th 1308, 1320-1321 (*Schwab*).) Also, in regard to section 580, its " 'notice requirement . . . was designed to insure fundamental fairness' (citation) . . . [¶] . . . [and] 'constitutes a statutory expression of the mandates of due process, which require "formal notice of potential liability." ' (Citation.)" (*Schwab, supra,* 114 Cal.App.4th at p. 1321.) The sum effect of the aforementioned statutes is to "deprive the clerk and the trial court of jurisdiction to enter a default, unless the defendant has been given formal notice of the amount of money damages or other relief sought." (*Id.* at p. 1325.)

B. Analysis

McLean contends, on various grounds, that plaintiffs' default judgment must be reversed because it violates the statutory and due process requirements set forth above and is therefore void. Whether a default judgment complies with constitutional and statutory requirements is a question of law on which we exercise independent review. (*Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 828.)

(1)

McLean contends judgment must be reversed because plaintiffs failed to serve a statement of damages prior to entry of default as required by section 425.11. Despite that default judgment was entered on plaintiffs' first cause of action for unpaid wages and bonuses, McLean contends a statement of damages was still required because the claim for unpaid wages was "closely related" to plaintiffs' personal injury claims for retaliation, wrongful discharge and infliction of emotional distress, citing *Jones, supra,* 160 Cal.App.3d 925, and *Schwab v. Rondell Homes, Inc.* (1991) 53 Cal.3d 428 (*Rondell Homes*). This contention is without merit.

The trial court awarded default judgment only on plaintiffs' breach of contract cause of action for wages and bonuses owed. Plaintiffs did not recover for personal injury or wrongful death. Therefore, plaintiffs were not required to serve a statement of damages under section 425.11 prior to entry of default. (*Sporn v. Home Depot USA, Inc.* (2005) 126 Cal.App.4th 1294, 1297, 1302 (*Sporn*) [no statement of damages required prior to entry of default judgment in favor of plaintiff for $930,000 where complaint "expressly apprised defendant of the amount demanded" in alleging five causes of action, requested $5 million in general damages and $10 million in punitive damages for each cause of action, and complaint "was not limited to personal injuries and did not claim wrongful death"]; *Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1136-1137 [noting statements of damages are used only for personal injury and wrongful death claims and that in all other cases plaintiffs are "limited to the damages specified in the complaint" when seeking default judgment].)

Appellant seeks to avoid the impact of the literal language of section 425.11 by arguing that plaintiffs' personal injury and non-personal injury claims are "closely related"; hence plaintiffs were required to file a statement of damages under section 425.11. In support of his argument, McLean relies principally on *Jones, supra,* 160 Cal.App.3d 925.

In *Jones,* plaintiffs sued Interstate Recovery Service (IRS) for trespass and four other causes of action for personal injury, such as assault and infliction of emotional distress, in an action arising from incidents that occurred when employees of IRS attempted to repossess plaintiffs' automobile. (*Jones, supra,* 160 Cal.App.3d at p. 927.) In their complaint, plaintiffs specifically requested general damages of $5,000 and punitive damages of $250,000 in regard to their trespass claim. (*Ibid.*) Also, plaintiffs requested specific amounts of general and punitive damages for each of their four personal injury claims. (*Ibid.*) Subsequently, the trial court entered default judgment in plaintiffs' favor as follows: "$5,000 on the first cause of action [for trespass], $25,000 on the second cause of action, $15,000 as to the third cause of action, $25,000 on the fourth cause of action, and $10,000 on the fifth cause of action." In addition, the trial court awarded a total of $40,000 punitive damages for a total damages award of $120,000. (*Ibid.*) IRS filed a motion for relief of default judgment "on the sole ground that the default judgment was void in that plaintiffs failed to personally serve [IRS] with a statement of damages as required by [section 425.11]." The trial court granted the motion for relief of default and plaintiffs appealed. (*Id.* at p. 928.)

The appellate court affirmed. As pertinent here, the appellate court rejected plaintiffs' request to reinstate default "on the causes of action which do not involve personal injury because section 425.11 would not apply." Without further elaboration, the court stated: "We decline. *In this instance*, plaintiffs' nonpersonal injury claims are tied so closely to the personal injury claims that section 425.11 applies to all causes of action." (*Id.* at p. 930 [italics added].)

The *Jones* court's ruling that section 425.11 may apply to non-personal injury causes of action where they are "closely tied to the personal injury claims" (*Jones, supra,*

160 Cal.App.3d at p. 930) has no application in this case. That is because there is a clear demarcation here between plaintiffs' personal injury claims and their claims for economic damages. *Barragan v. Banco BCH* (1986) 188 Cal.App.3d 283 (*Barragan*) is instructive on this point.

In *Barragan*, a Mexican bank sought to set aside a default judgment as void on the ground plaintiff failed to file a statement of damages under section 425.11. Relying on *Jones, supra*, 160 Cal.App.3d 925, the bank argued the default judgment should be reversed because "the damages for false imprisonment are so intertwined with other damages that the judgment is void." (*Barragan, supra*, 188 Cal.App.3d at p. 303.) The appellate court rejected the bank's argument as "factually and legally unsupported." (*Ibid.*) The court pointed out the trial court "made a single award of damages" that was not apportioned between plaintiffs Roberto Barragan and his wife Aida: Only Roberto sought damages for personal injury in connection with his false imprisonment claim, and both plaintiffs alleged other theories of recovery such as conversion, fraud and breach of contract. (*Id.* at p. 304.) The court noted that the evidence of damages tracked these other theories of recovery, not the false imprisonment claim: Aida testified that plaintiffs lost their business, valued at $692,000, and were forced to sell their home at a loss of $65,500 because the bank refused to honor their checks. (*Ibid.*) Accordingly, the court concluded: "[U]nlike *Jones* the damages attributable to Roberto Barragan's false imprisonment claim are not so intertwined with the economic loss sustained by both plaintiffs that it is necessary to void the judgment." (*Ibid.*)

As in *Barragan, supra*, there is a clear demarcation here between plaintiffs' personal injury claims and their claims for economic damages. Plaintiffs first cause of action for breach of employment agreement is a separate and distinct claim alleging that they are "entitled to an award of all wages and bonus payments due and owing, as well as penalties, interest pursuant to the Labor Code, costs and attorney fees, all in an amount in excess of $400,000, the exact amount to be ascertained at trial." Thus, as in *Barragan,*

the *Jones* court's ruling does not mandate reversal of the default judgment at issue.[5] Accordingly, we deny McLean's contention that the default must be reversed because no statement of damages was served prior to entry of default.

(2)

McLean also argues that the default judgment does not comport with the due process requirements of the default statutes because the complaint fails to notify defendant of the general and special damages claimed by *each* plaintiff prior to entry of default judgment. In other words, because the complaint specified only "the lump sum total" for all plaintiffs and failed to notify him of the general and special damages claimed by *each* plaintiff, McLean contends the default judgment must be reversed. This argument is multi-faceted.

First, McLean argues that *Schwab, supra,* "shows that before a default may be entered, the defendant is entitled to knowledge of the claim of *each plaintiff*." *Schwab* does not stand for such a generally applicable rule. The appellate court in *Schwab* reviewed multiple defaults and judgments in a personal injury case filed by Michael and Sherry Schwab (plaintiffs) against the gas company (Southern Gas), the electrical company (SCE), the City of San Jacinto (City), and a contractor (B & Sons) for personal injury to Michael and loss of consortium to Sherry. Southern Gas, SCE and the City all filed cross-complaints against B & Sons. Plaintiffs and cross-complainants took separate entries of default against B & Sons and the trial court entered judgments against B &

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[5] The other case cited by McLean, *Rondell Homes, supra,* lends no support to the proposition that a statement of damages may be required for non-personal injury claims that are tied closely to personal injury claims. Rather, the court in *Rondell Homes* rejected plaintiffs' claims that their complaint for housing discrimination was not subject to section 425.11 because their action was not for personal injury or wrongful death. The court observed that "plaintiffs' own pleadings belie their assertion that mental or emotional distress does not, in fact, lie at the heart of their action" because the complaint included a prayer " for judgment as follows: 1. Damages for mental and emotional distress in an amount as may be according to proof." (*Rondell Homes, supra,* 53 Cal.3d at p. 432.) Here, by contrast, plaintiffs' default judgment is based on a non-personal injury claim for breach of employment agreement and Labor Code violations, not mental/emotional distress or any other type of personal injury.

Sons in favor of all parties. B & Sons appealed the trial court's denial of its motion to set aside the default judgments. (*Schwab, supra,* 114 Cal.App.4th at pp. 1315-1316.)

The appellate court upheld the trial court's entry of default judgments in favor of plaintiffs and Southern Gas. In affirming that portion of the trial court's ruling, the court noted that the amounts awarded were less or equal to the amounts demanded in their respective statements of damages, which were "sufficiently specific" with respect to the general and special damages sought by those parties. (*Schwab, supra,* 114 Cal.App.4th at p. 1323.) On the other hand, the court invalidated the defaults and judgments in favor of SCE and the City for lack of notice because default was entered before their statements of damages were properly served on B & Sons. (*Id.* at p. 1324.)

The *Schwab* court also rejected SCE's and the City's alternative argument that lack of notice on their part should be excused because "they should be able to rely on plaintiffs' 1997 statement of damages, [as] it encompassed the 'entire universe' of the damages that they . . . were seeking." (*Schwab, supra,* 114 Cal.App.4th at pp. 1325.) As pertinent here, the court stated that the default statutes "require formal notice of the amount of money damages or other relief sought *by the party seeking relief.* . . . [T]he notice requirement enables a defendant to choose between (1) allowing his default to be taken, knowing he cannot be held liable for an amount greater than the amount noticed, and (2) defending the action and risking greater liability. (Citation.) To make an informed choice between these alternatives, a defendant must be given notice of the amount *each plaintiff or cross-complainant* is seeking." (*Ibid*., italics added)

McLean's reliance on the *Schwab* court's ruling on this latter point is misplaced. The *Schwab* court crafted this ruling in the context of a case where four parties — plaintiffs plus three cross-defendants—each sought default judgment. In such a case, the *Schwab* court ruled, a party seeking default against a defendant cannot satisfy the formal notice requirements of the default statutes by relying on the notice provided by *another* party who is similarly seeking default against the same defendant. (*Schwab, supra,* 114 Cal.App.4th at p. 1325.) First, *Schwab* is distinguishable on the ground that the defaults taken in *Schwab* involved four separate pleadings—the Schwabs' complaint against

Southern Gas, SCE Electric and contractor B & Sons and three cross-complaints by Southern Gas, SCE and the City of San Jacinto, each against B & Sons—whereas in this case default was taken on one complaint which included a prayer for the aggregate damages sought by all plaintiffs. Moreover, *Schwab* did not rule that where there are multiple *plaintiffs*, each *plaintiff* must provide formal notice of damages when only plaintiffs seek default: *Schwab* did not address that issue at all. Further, the *Schwab* court's ruling has no application here because plaintiffs, in seeking default, did not attempt to rely on the formal notice of damages provided by another party seeking default.

Also, case law does not support McLean's proposition that each *plaintiff* must provide formal notice of damages. The cases emphasize that the formal notice requirement of section 580 is "designed to insure fundamental fairness" and that as a consequence "a prayer for damages according to proof passes muster under section 580 only if a specific amount of damages is alleged in the body of the complaint." (E.g., *Becker v. S.P.V. Construction Co.* (1980) 27 Cal.3d 489, 494 (*Becker*).) But we have found no case, and McLean cites us to none, where a court held that section 580 entailed a level of specificity that requires formal notice of potential liability to *each plaintiff*. In fact, *Becker, supra,* involved two plaintiffs, Hugh Becker and Ute Becker, who took a default judgment against defendants S.P.V. Construction Company, Inc. and its president (jointly SPV). The trial court subsequently granted SPV's motion to vacate the judgment. The California Supreme Court affirmed, not because plaintiffs Hugh and Ute Becker failed to separately state their damages in the complaint, but because the damages awarded to plaintiffs exceeded the total amount plaintiffs jointly claimed in the complaint. (*Becker, supra,* 27 Cal.3d at p. 494.) The case law makes clear that the "notice requirements of due process [lying] at the core of section 580" are intended to " ' "guarantee defaulting parties adequate notice of the *maximum judgment* that may be assessed against them." ' " (*Finney v. Gomez* (2003) 111 Cal.App.4th 527, 534-535 [citing *In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166; *Greenup v. Rodman* (1986) 42 Cal.3d 822, 826, *Becker, supra,* 27 Cal.3d 489, 494], italics added.) Nothing in the

case law suggests due process requires notice of the maximum judgment sought by party plaintiffs to be broken down into the specific amounts sought by each individual plaintiff.

Indeed, the paucity of McLean's argument on this point is laid bare when he attempts to morph the *Schwab* argument into an issue of statutory interpretation. He asserts that proper notice under the default statutes requires *each plaintiff* to separately state "the amount of damages that each plaintiff claims the defendant is liable for." McLean bases this statutory interpretation on the fact that the various default statutes use the singular form in specifying notice requirements. McLean notes section 425.10 requires "a demand for judgment for the relief to which *the pleader* claims to be entitled; section 425.11 requires that "*the plaintiff* shall serve the statement [of damages] on the defendant before a default may be taken" (italics added); and section 580 specifies that "the relief granted *to the plaintiff*, if there is no answer, cannot exceed that which *he or she shall have demanded in his or her complaint*."

McLean's statutory interpretation is erroneous. No significance at all attaches to the use of the singular in the default statutes because it has long been recognized that under the California codes "the word 'person' includes 'persons,' for it is expressly declared that the singular shall include the plural. (Civ. Code, sec. 14; Code Civ. Proc., sec. 17; Pen. Code, sec. 7; Pol. Code, sec. 17.)" (*In re Mathews* (1923) 191 Cal. 35, 43; see also *Zanelli v. McGrath* (2008) 166 Cal.App.4th 615, 624-625 ["section 14 provides that words in the Civil Code in the singular include the plural" therefore "person" in statute providing for extinguishment of easements includes the plural]; *Pratt v. Robert S. Odell & Co.* (1944) 63 Cal.App.2d 78, 83 [language under former section 1034 stating that "the party" entitled to costs on appeal may recover all amounts actually paid is properly understood "as authorizing parties defendant who have expended money in a common appeal to file a joint cost bill, irrespective of the amount each individually may have contributed"]; *Shell Oil Co. v. Superior Court* (1935) 5 Cal.App.2d 480, 482-483 [holding that "section 14 of the Civil Code . . . applies to the term 'defendant' as it is used in the statute requiring a plaintiff in a libel or slander suit to file a $500 bond to secure the payment of costs and charges incurred by 'the defendant' in the event of a recovery of

judgment . . . and that the statute requires no other or greater bond than the amount specified even though several defendants may have been joined in the action"].)[6]

Third, McLean contends that a valid default judgment requires that a defendant "be notified of the amount claimed for each distinct element of damages," including general and special damages, in order to "aid defendant's evaluation of the claim." For this proposition, McLean relies on *Plotitsa v. Superior Court* (1983) 140 Cal.App.3d 755, 761 (*Plotitsa*) [holding that statement of damages giving "total amount of damages sought, without a breakdown as between special and general damages" did not satisfy section 425.11].) However, *Plotitsa* does not control because notice in this case is not governed by section 425.11. (*Sporn, supra,* 126 Cal.App.4th at p. 1302 [no statement of damages required where default based on non-personal injury claim].) Rather, notice is governed by section 580. The complaint satisfies section 580 because it informed McLean that plaintiffs sought general damages for unpaid wages and special damages for attorney fees, all in a sum "in excess of $400,000." This demand limited plaintiffs' recovery in a default judgment to $400,000 in general and special damages and satisfied the notice requirements of section 580.[7] (See *Becker, supra,* 27 Cal.3d at p. 494 ["prayer

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[6] We also reject McLean's attempt to convert the rule applicable to offers of settlement under section 998 (multiple plaintiffs must indicate how a settlement offer to a single defendant to be allocated among them) into a pleading requirement that a complaint filed by multiple plaintiffs must set forth the specific damages for each plaintiff before plaintiffs may take default against a defendant under section 580. "The purpose of section 998 is to encourage the settlement of lawsuits before trial by penalizing a party who fails to accept a reasonable offer from the other party." (*Taing v. Johnson Scaffolding Co.* (1992) 9 Cal.App.4th 579, 583.) Thus, a settlement offer by multiple plaintiffs to a single defendant does not conform to section 998 because the defendant cannot "determine whether *each* individual plaintiff in fact obtained a judgment more favorable than the offer." (*Gilman v. Beverly California Corp.* (1991) 231 Cal.App.3d 121, 124.) On the other hand, section 580's notice requirement was "designed to insure fundamental fairness." (*Schwab, supra,* 114 Cal.App.4th at p. 1321.) Thus, it makes no difference for purposes of section 580 whether a complaint by three plaintiffs alleges $500,000 each or $1.5 million for all three plaintiffs because the relief granted to plaintiffs by default "cannot exceed that demanded in the complaint." (§ 580.)

[7] Plaintiffs received a total judgment of $310,505.85 in unpaid wages, penalties on unpaid wages and attorney fees, which is well within the $400,000 amount alleged for

for damages according to proof passes muster under section 580 only if a specific amount of damages is alleged in the body of the complaint," therefore default judgment in favor of plaintiffs was limited to $20,000 where complaint sought damages "in excess of $20,000 . . . or according to proof"]; *Cummings Medical Corp. v. Occupational Medical Corp.* (1992) 10 Cal.App.4th 1291, 1296, fn. 5 [cross-complaint seeking punitive damages in amount in excess of $2 million provided sufficient notice to defendant under section 580 to support default judgment of $2 million or less]; *Engebretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 444 [complaint seeking damages "in excess of $5,000" sufficient to support a default judgment for no more than $5,000].)

In sum, the default judgment in favor of plaintiffs was based solely on their first cause of action for breach of employment agreement and Labor Code violations. The default judgment included general damages for unpaid wages and special damages for attorney fees. In total, the sum awarded plaintiffs in the judgment did not exceed the amount stated in the complaint for the first cause of action. Accordingly, the trial court did not lack jurisdiction to enter the award, the default judgment is valid, and McLean's collateral attack on the judgment fails. (*Becker, supra,* 27 Cal.3d at p. 494.)

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general and special damages in the complaint under plaintiffs' first cause of action. Plaintiffs also received a total of $90,747.51 interest on unpaid wages to June 1, 1999. However, plaintiffs were entitled by law to interest on their unpaid wages pursuant to Labor Code section 216.6 ["In any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code"]. "It is well established, consistent with the liberal rule enunciated in section 580 of the Code of Civil Procedure, that in a contested case interest may be awarded, if the plaintiff is entitled thereto, notwithstanding the complaint contains no prayer for interest. [Citations.] . . . The rationale of these cases is the simple proposition that in a contested action on a money claim which can be made certain by calculation, the matter of interest for the withholding of the money is 'embraced within the issue' (Code Civ. Proc., § 580) and the appropriate interest may be allowed even though not prayed for or the prayer is for less interest than the evidence shows the plaintiff to be entitled." (*Sears, Roebuck & Co. v. Blade* (1956) 139 Cal.App.2d 580, 595-596.) Thus, plaintiffs' additional award of interest does not affect the section 580 analysis even though it pushes the total award over $400,000.

DISPOSITION

The judgment is affirmed. Appellant shall bear costs on appeal.

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Jenkins, J.

We concur:

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Pollak, Acting P. J.

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Siggins, J.